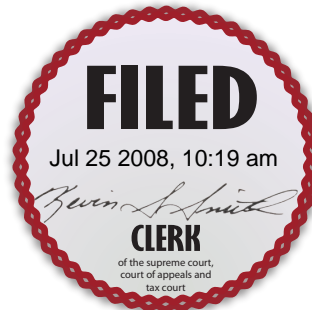


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIP OF M.T.K., MINOR CHILD,)
AND HIS MOTHER, B.D., AND HIS FATHER,)
J.D.K.,)

B.D., Mother,)

Appellant-Respondent,)

vs.)

MONTGOMERY COUNTY DEPARTMENT)
OF CHILD SERVICES,)

Appellee-Petitioner.)

No. 54A01-0801-JV-16

APPEAL FROM THE MONTGOMERY CIRCUIT COURT
The Honorable Thomas K. Milligan, Judge
Cause No. 54C01-0707-JT-154

July 25, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Respondent B.D. (“Mother”) appeals from the trial court’s order terminating her parental rights to her minor child, M.T.K. Mother claims that (1) the trial court abused its discretion by denying her motion to continue the hearing on the termination of her parental rights and (2) the evidence against her was insufficient to support the trial court’s judgment. Concluding that the trial court did not abuse its discretion and that the evidence was sufficient to support the trial court’s judgment terminating Mother’s parental rights to M.T.K., we affirm.

FACTS AND PROCEDURAL HISTORY

On April 6, 2005, the Montgomery County Department of Child Services (“DCS”) was notified that Mother had overdosed on drugs and had been admitted to the St. Clare Medical Center. At that time Mother had four children, including M.T.K., the subject of the instant appeal. M.T.K. was born to Mother and J.D.K. (“Father”) on October 6, 1998.¹

Todd Walsh from DCS interviewed Mother on April 11, 2005, at which time she admitted to voluntarily using heroin on the night she overdosed and habitually using other drugs such as morphine pills and methamphetamines. Mother’s toxicology screen from the night of the overdose indicated the presence of amphetamines, opiates, cocaine, and benzodiazepines. On April 12, 2005, the children’s maternal grandmother, who Mother had arranged to be caretaker of M.T.K. and his siblings, called DCS and reported that she would not be able to care for the children on a long-term basis. On April 13, 2005, DCS moved for the emergency detention of M.T.K., which the trial court granted, and M.T.K. was placed in

¹ Father is not a party to this appeal.

foster care. On April 20, 2005, DCS filed its petition alleging M.T.K. to be a child in need of services (“CHINS”).

Mother was referred to the Wabash Valley Outpatient Clinic for substance abuse treatment, individual and family therapy, and attendance in the Intensive Outpatient Program. At Wabash Valley, adult case manager Glenda Rice set up supervised visits between Mother and her children. Mother had three visits in April supervised by Rice, specifically on the 14th, 21st, and 28th.² The first visit was reportedly successful. The second two were not. On April 21st, Mother seemed tired, had a difficult time understanding her children, and could not stop M.T.K. and his brother from fighting. Rice ended the visit prematurely. On April 28th, Mother became upset when apparently confronted by her daughter. More visits were scheduled, the majority of which were cancelled due to Mother’s failure to maintain her sobriety. On June 14, 2005, the court determined that M.T.K. was a CHINS. On August 11, 2005, M.T.K. and his siblings were placed together in a new foster care home.

In August 2005, Mother was arrested for forgery. On August 25, 2005, she was incarcerated in the Montgomery County Jail. Mother entered a guilty plea and was sentenced to six years, with the first two years to be served in direct commitment to Community Corrections and four years suspended to probation.

On October 25, 2005, addictions counselor Marilyn Richardson assessed Mother and referred her to Fellowship House, an addictions treatment facility in Terre Haute. In

² Rice testified that Mother had three other visits in April, which were supervised by Allison Everman and Susan Parker.

December 2005, shortly after arriving at Fellowship House, Mother violated some of the program rules and was placed on a strict behavioral plan. In February 2006, Mother was discharged unsatisfactorily from Fellowship House, which resulted in the revocation of her probation in the forgery case and the imposition of a full six-year sentence in the Department of Correction.

Approximately five days following her discharge, Mother was arrested and charged with possession of a controlled substance. She was convicted of the controlled substance charge on October 31, 2005 and sentenced to a consecutive three-year sentence, with six months to be served in direct commitment to Community Corrections and thirty months of probation. On February 20, 2006, Mother was taken to the Madison Correctional Facility. Beginning in January 2007, Mother successfully completed several programs, including Thinking for a Change, parenting classes, an anger management course, substance abuse classes, a trauma group, and a smoking cessation class. Mother's successful completion of the substance abuse program reduced her sentence by six months, moving her release date from August 2008 to March 2008.

In January 2007, DCS again moved M.T.K., this time to a therapeutic foster care home, because his current foster parents were reportedly verbally abusive towards him and not meeting his therapeutic needs. It appears that on July 31, 2007, in an effort at reunification, M.T.K. and his siblings were transferred to court-ordered placement with C.C.,

Mother's estranged husband and biological father to M.T.K.'s siblings.³ This reunification did not last. A month later C.C. informed DCS that he was unable to care for the children and asked that they go back into foster care. In September 2007, M.T.K. was placed back into his previous therapeutic foster care home. According to Brenda Payne, DCS family case manager, and Bud Dowden, M.T.K's Court Appointed Special Advocate ("CASA"), M.T.K. has done well in this therapeutic foster home where he is provided structure and routine. He has maintained his school grades, has had no more behavioral difficulty, and has been involved in after-school programs and youth basketball. His current foster care mother identifies a strong bond between herself and M.T.K. and is willing to adopt him and cooperate in any other services that DCS determines he needs.

On July 6, 2007, DCS filed a petition to terminate Mother's parental rights. The trial court set a hearing for November 13, 2007, at which Mother moved for a continuance on the basis that she was in jail at the time. The trial court denied Mother's motion to continue and on November 21, 2007, entered an order terminating her parental rights to M.T.K. Mother now appeals.

DISCUSSION AND DECISION

The involuntary termination of one's parental rights is the most extreme sanction a court can impose because termination severs all rights a parent has with regard to his or her children. *See In re T.F.*, 743 N.E.2d 766, 770 (Ind. Ct. App. 2001), *trans. denied*. As such,

³ All of the evidence in the transcript, including testimony and the chronological case summary, indicates that M.T.K. and his siblings were placed with C.C. in July 2007, although the trial court's order terminating parental rights says that the children were placed with C.C. in December 2006.

termination is intended as a last resort, available only when all other reasonable efforts have failed. *Id.* The purpose of terminating one's parental rights is not to punish the parent, but rather to protect the child. *Id.* Although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*

I. Motion for a Continuance

Mother contends that the trial court abused its discretion by denying her motion for a continuance. The decision to grant or deny a motion for a continuance rests within the sound discretion of the trial court, and we will not disturb the trial court's ruling absent a showing of clear and prejudicial abuse of discretion. *Parmeter v. Cass County Dep't of Child Servs.*, 878 N.E.2d 444, 449 (Ind. Ct. App. 2007), *reh'g denied*.

Mother claims that the trial court's denial of her motion for a continuance constituted an abuse of discretion because she was scheduled to be released from prison four months after the termination hearing and also because she had participated in several programs while incarcerated. In challenging the trial court's denial of her motion, Mother relies on *Rowlett v. Vanderburg County Office of Family and Children*, 841 N.E.2d 615 (Ind. Ct. App. 2006), *trans. denied*. In *Rowlett*, the father did not live with the children or cause their removal from their mother's care, and the children's placement was with family members. *Id.* at 618. Shortly after the children's CHINS hearing, the father was incarcerated and remained so during the termination proceedings. *Id.* Prior to the termination hearing, which was set for a

date only six weeks before his release date, the father moved for a continuance, which the trial court denied. *Id.* Following termination of the father's parental rights, this court reversed, finding that the trial court had abused its discretion in denying father's motion to continue on the basis that he had not yet been given the opportunity to demonstrate his fitness as a parent, and that further, a continuance would have no "immediate effect upon the children" because they were not in temporary foster care, but rather, living in a pre-adoptive setting with their maternal grandmother. *Id.* at 619-20.

The facts of the case at bar distinguish it from *Rowlett*. Here, Mother's release date was a full four months past the scheduled hearing date, after which she still had another six months in Community Corrections, which would likely involve another residential drug treatment requirement. In addition, M.T.K. lived with Mother at the time she overdosed, and Mother caused his removal. Further, as this court acknowledged in *Rowlett*, granting the father's motion to continue would not have had any immediate effect on the children because of their placement. In the instant case, while a continuance would not have had an immediate effect on M.T.K.'s placement, he was nevertheless in foster care, and a continuance prolonged the temporary nature of his foster child status. Further still, while the *Rowlett* father participated in several voluntary programs and earned college credit while incarcerated, indicating his preparedness to turn his life around, Mother's participation in prison programs, one of which had the incentive of a reduced sentence, did not similarly demonstrate an ability to change her life outside of a controlled setting. Indeed, before she was incarcerated Mother had the opportunity but failed to initiate and/or complete many

required services, which would have led to reunification. Finally, the father in *Rowlett* was able to establish prejudice because he was incarcerated at all relevant times and thus not given a chance to demonstrate his fitness as a parent. Mother, in contrast, received such a chance and was unable to maintain her sobriety or comply with services. She has failed to demonstrate that a continuance would produce a different result.

Given the instant circumstances as distinguishable from *Rowlett* and Mother's failure to demonstrate prejudice, we find no abuse of discretion in the trial court's denial of Mother's motion for a continuance. *See In re J.M.*, 802 N.E.2d 40, 44 (Ind. Ct. App. 2004), *trans. denied* (affirming denial of a motion for continuance).

II. Sufficiency of the Evidence

Mother also contends that the evidence against her was insufficient to support the trial court's ruling terminating her parental rights to M.T.K. In reviewing termination proceedings on appeal, this court will not reweigh the evidence or assess the credibility of the witnesses. *In re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We only consider the evidence that supports the trial court's decision and reasonable inferences drawn therefrom. *Id.* Where, as here, the trial court enters findings of fact and conclusions of law in its termination of parental rights, our standard of review is two-tiered. *Id.* First, we must determine whether the evidence supports the findings, and, second, whether the findings support the conclusions of law. *Id.* We will only set aside a trial court's findings and judgment terminating the parent-child relationship if it is clearly erroneous. *Id.* A finding of fact is clearly erroneous when there are no facts or

inferences drawn therefrom to support it. *Id.* We will reverse a judgment as clearly erroneous if a review of the record leaves us with a “firm conviction that a mistake has been made.” *In re J.W.*, 779 N.E.2d 954, 959 (Ind. Ct. App. 2002), *trans. denied*. If the evidence and the reasonable inferences drawn therefrom support the trial court’s decision, then we must affirm. *In re L.S.*, 717 N.E.2d at 208.

To involuntarily terminate a parent-child relationship, the State must establish:

- (A) One (1) of the following exists:
 - (i.) the child has been removed from the parent for at least six (6) months under a dispositional decree;
 - (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court’s finding, the date of the finding, and the manner in which the finding was made; or
 - (iii) after July 1, 1999, the child has been removed from the parent and has been under supervision of the county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
- (B) there is a reasonable probability that:
 - (i) the conditions that resulted in the child’s removal or the reasons for placement outside the home of the parents will not be remedied; or
 - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b) (2005). Here, Mother challenges the trial court’s finding that it is reasonably probable that the conditions resulting in M.T.K.’s removal from her home will not be remedied, that continuation of the parent-child relationship poses a threat to M.T.K., and that termination of her parental rights is in M.T.K.’s best interests.

A. Reasonable Probability That Conditions Will Not Be Remedied

Mother first argues that DCS failed to meet its burden of showing clear and convincing evidence that the reasons for M.T.K.'s removal were unlikely to be remedied. This court has held that when determining whether certain conditions that led to the removal of the child will be remedied, the trial court must judge the parent's fitness to care for the child at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re D.J.*, 755 N.E.2d 679, 684 (Ind. Ct. App. 2001), *trans. denied*. A parent's habitual patterns of conduct must also be evaluated to determine the probability of future negative behavior. *Id.* The trial court need not wait until a child is irreversibly harmed such that his physical, mental, and social development are permanently impaired before terminating the parent-child relationship. *Id.* Additionally, the trial court may consider the services offered as well as the parent's response to those services. *Id.*

Mother specifically argues that the only basis for the removal of M.T.K. was her substance abuse problem. She further argues that she has taken classes and been involved in programs to address her substance abuse while incarcerated. She further relies on the testimony of Rice and Richardson, both of whom said that she has taken a "step in the right direction" in arguing that the trial court erred in finding that DCS met its burden of clear and convincing evidence on this issue. Tr. pp. 44, 51.

Mother was unsuccessfully discharged from the single inpatient drug abuse program that she actually enrolled in. Less than a week after Mother's discharge from that program, she was arrested again, this time for possession of a controlled substance. While Mother may have completed a nine-month substance abuse program while incarcerated, she admits that

this program offered the incentive of up to a six-month reduction in her sentence, which she received. We cannot say that the trial court was clearly erroneous when it concluded that even if Mother had refrained from drug use while in prison, her pattern of conduct suggests that she may likely relapse upon release.

Mother also challenges the termination at issue on the basis that family case manager Payne testified that two other reasons supporting the involuntary termination of her parental rights to M.T.K., besides her substance abuse problem, were Mother's difficulties with the law and her difficulty finding stable housing. It is clear that the trial court did not rely on either of these reasons. Specifically, the trial court pointed to the fact that Mother was in jail and would be there for another four months. According to the trial court, it would take at least another two or three months after her release from prison "for [Mother] to demonstrate whether or not she [could] do what she need[ed] to do in order to get [M.T.K.] back." (Tr. 27) The court further determined that this was too long to make M.T.K. wait for permanence or a family in which to grow up. Finally, to the extent that Mother argues that her poverty should not be used as a basis for her termination, the record shows that this factor was not relied upon by the trial court. While the trial court's order terminating Mother's parental rights does allude to the fact that perhaps she will not be able to care for M.T.K. financially, the court indicated that its order terminating Mother's rights was based upon M.T.K.'s need for stability and Mother's inability to demonstrate that she could maintain her sobriety. The order terminating parental rights states as follows:

[Mother] has yet to demonstrate that she can take care of herself on her own without using illegal or controlled substances or that she can provide for

herself. It is quite another matter to provide for a child or children in addition to taking care of oneself. There is a very small likelihood that [Mother] is going to be in any position emotionally, financially, physically, [or] psychologically to take care of [M.T.K.] anytime soon after she leaves the Department of Corrections....The Court finds that the most important need [M.T.K.] has at this time is certainty, his permanency....

Thus, the trial court did not rely on Mother's poverty in ordering the termination of her parental rights, but rather, her inability to care for M.T.K. and M.T.K.'s need for permanence.

Based on the trial court's assessment of the evidence and the credibility of the witnesses, we cannot conclude that the trial court's findings and conclusions were unsupported or that the judgment was clearly erroneous. Although Mother also argues that there was insufficient evidence for the trial court to find that the continuation of the parent-child relationship between her and M.T.K. poses a threat to M.T.K., we note that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, so we only need to establish that one of the factors was proven. *See In re D.L.*, 814 N.E.2d 1022, 1027 (Ind. Ct. App. 2004), *trans. denied*.

B. M.T.K.'s Best Interests

Mother finally argues that DCS did not establish by clear and convincing evidence that termination of the parent-child relationship is in M.T.K.'s best interests. We disagree. During the course of her testimony, DCS family case manager Brenda Payne had the following exchange:

Q: Do you believe that given more time [Mother] can remedy the conditions from which the children were originally removed?

A: I believe that she might be able to make progress. Do I believe that over the next year or more that she could provide a home environment while meeting all of her other needs, no.

Q: Is it your understanding that she's to be on house arrest upon her release from the Department of Corrections?

A: Correct and then probation.

Q: Are you asking the court then to terminate the parental rights [to] [M.T.K.], [of Mother]. . .?

A: Yes.

Q: Do you believe that's in [M.T.K.'s] best interest?

A: I do.

Q: Have you reviewed your recommendation with Bud Dowden, the child's CASA?

A: Yes.

Q: Does he concur in that?

A: It is my belief that he does.

Tr. p. 72. Additionally, when asked about his recommendation with respect to these proceedings, Bud Dowden, the CASA responded:

Well it's my recommendation to terminate parental rights because I feel that [M.T.K.] does need to know, I think he needs the stabilized permanency plan that we could put forward and I feel that at this point in his life I think that six months to another year of him not knowing while we wait for someone to see if they can provide housing or whatever I think would be a long time for him and I think that [M.T.K.] in the past couple of months has done very well and had become quite stable and I feel that we should perpetuate that and not disrupt his life further.

Tr. p. 89. In light of the testimony of the DCS family case worker and the CASA, we conclude that the evidence is sufficient to satisfy DCS's burden of proving that termination of Mother's parental rights is in M.T.K.'s best interests.

In sum, we conclude that the trial court did not abuse its discretion by denying Mother's motion to continue and that DCS presented sufficient evidence to support the trial court's order terminating Mother's parental rights to M.T.K.

The judgment of the trial court is affirmed.

BARNES, J., and CRONE, J., concur.